

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

ORIGINAL
WITH PROOF
OF SERVICE

77-6164

12/16

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

ANNA SELMA VINJE MORPURGO,

Plaintiff-Appellant,

-against-

BOARD OF HIGHER EDUCATION IN CITY OF NEW YORK, as Board of Trustees for The City University of New York, the Graduate School and University Center of the City University of New York, and John/Jane Doe, employees, former employees, and JOHN/JANE DOE,
Defendants-Appellees.

ANNA SELMA VINJE MORPURGO,

Plaintiff-Appellant,

-against-

UNITED STATES OF AMERICA, BOARD OF HIGHER EDUCATION N.Y.C., MASSACHUSETTS INSTITUTE OF TECHNOLOGY, PRINCETON UNIVERSITY, and RICHARD KLEINDIENST, WILLIAM SAXBE, EDWARD H. LEVI, HENRY KISSINGER, MARY MOTHERSILL, ALFRED A. CIARDINO, ROBERT J. KIBBEE, DAVID NEWTON, HAROLD M. PROSHANSKY, HANS J. HILLERBRAND, ARNOLD KOSLOW, ABRAHAM EDEL, JULIUS ELIAS, GERALD MYERS, ANDREW J. McLAUGHLIN, JASON SAUNDERS, VIRGINIA HELD, PETER CAWS, RUDOLPH GREWE, C.S. HONG, ROBERTA THORNTON, NORMA REES, NATHANIEL LEWIS, KURT SCHMELLER,
Defendants-Appellees.

ANNA SELMA VINJE MORPURGO,

-against-

PROFESSIONAL STAFF CONGRESS/CUNY (PSC), VLADECK ELIAS VLADECK & LEWIS (VLADECK), BOARD OF HIGHER EDUCATION N.Y.C. (BHE) and JUDITH P. VLADECK, ANTHONY DE MEALAS, ABRAHAM EDEL, DAVID NEWTON, ROBERT KIBBEE, ARTHUR W. STERN, FREDDIE G. HOLT, RALPH MUNOZ, VINCENT DONATO, KASINE WALKER, AL KERSEY, MAXINE ARCHER, THOMAS W. BARRON, and JOHN/JANE DOE,
Defendants-Appellees.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF DEFENDANT-APPELLEE
PROFESSIONAL STAFF CONGRESS/C.U.N.Y. (PSC)

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PRELIMINARY STATEMENT

Plaintiff-appellant Anna Selma Vinje Morpurgo ("Ms. Morpurgo") appeals from the judgment of United States District Judge Edward Weinfeld dismissing her amended verified complaint in 75 Civ. 4913* and in the alternative, (with respect to Professional Staff Congress /C.U.N.Y.) granting partial summary judgment to it. Judge Weinfeld's decision is reported in 423 F. Supp. 704.

This brief focuses upon the claims made by Ms. Morpurgo against defendant-appellee Professional Staff Congress/ C.U.N.Y. ("PSC") the labor union representing, among others, the faculty of the City University of New York.

* This appeal by Ms. Morpurgo is from the dismissal of three companion actions in which she is plaintiff. PSC is a party to 75 Civ. 4913 alone.

ISSUES PRESENTED

1. Has Ms. Morpurgo established a cause of action that PSC has conspired to deprive her of her civil rights in violation of Title VII of the Civil Rights Act of 1964?

The Court below answered this question in the negative.

2. Has Ms. Morpurgo established a cause of action that PSC has conspired to deprive her of her civil rights in violation of U.S.C. § 1985 (3)?

The Court below answered this question in the negative.

3. Has Ms. Morpurgo established a cause of action that PSC breached its statutory duty of fair representation to her.

The Court below answered this question in the negative.

4. Is PSC entitled to partial summary judgment dismissing appellant's claim that PSC breached its statutory duty of fair representation to her?

The Court below answered this question in the affirmative.

5. Since Ms. Morpurgo has disclaimed membership in a group constitutionally protected against discrimination and denied that she is the subject of invidious discrimination, have such disclaimers and denials rendered her claims under 42 U.S.C. §1985 (3) and Title VII fatally defective?

The Court below answered this question in the affirmative.

6. Is PSC entitled to dismissal of Ms. Morpurgo's Title VII claim because of her failure to name PSC as a respondent in her complaint before the Equal Employment Opportunity Commission ("EEOC")?

The Court below did not consider this question.

NATURE OF THE CASE
(against PSC)

This is (with two companion cases) a pro se action by Ms. Morpurgo against PSC and others in which appellees are alleged to have conspired together for the purpose of depriving her, among other things of her right (a) to employment, (b) to continue as a graduate student, and (c) to the free exercise of her First Amendment rights in violation of Title VII of the Civil Rights Act of 1964, and 42 U.S.C. §1985 (3). In addition, she alleges that PSC breached its statutory duty of fair representation to her (29 U.S.C. § 185).

The action against PSC arose from the refusal of the Board of Higher Education ("BHE") to reappoint Ms. Morpurgo to her former position as a part-time lecturer in philosophy at Queensboro Community College. She thereupon filed a grievance against BHE through her union, PSC.

As her efforts to win reappointment were frustrated, she tried other forums until, ultimately, she commenced three separate litigations in District Court naming as defendants, in addition to PSC and BHE, several employees of EEOC (with whom she filed an unsuccessful complaint), several employees at the New York State Division of Human Rights (with whom she also filed an unsuccessful complaint), her attorneys in the EEOC action, various high United States Government officials, Massachusetts Institute of

Technology and Princeton University, who rejected her application for their doctoral programs, and others, all of whom are alleged to be participants in this alleged conspiracy, the nature of which is set forth in the statement of facts, infra.

COURSE OF THE PROCEEDINGS BELOW

Ms. Morpurgo's amended verified complaint (her fourth in the companion actions--three having been previously dismissed) was dismissed and, alternatively, partial summary judgment was granted (to PSC) on motions made by the various appellees following the conclusion of Ms. Morpurgo's discovery and prior to trial. There were no other proceeding that were relevant to PSC.

STATEMENT OF FACTS *

A. Background

Ms. Morpurgo, from the fall of 1969 through the summer of 1972, was part-time lecturer in philosophy at Queensboro Community College and was a doctoral candidate in philosophy at City University.

In April, 1972, Ms. Morpurgo was notified that the Personnel and Budget Committee of the Social Sciences Department of Queensboro Community College had voted to recommend that she not be reappointed to teach the following (1972 fall) semester. Appellant thereupon filed a grievance against BHE with her union. In April 1972, Ms. Morpurgo's union was the United Federation of College Teachers ("UFCT") which shortly thereafter merged with another union into a successor-PSC.

Article VI of the collective bargaining agreement between UFCT and BHE in effect in April, 1972 established Ms. Morpurgo's grievance procedure. As described in the agreement it is a three step procedure.**

At Step I, PSC alleged on Ms. Morpurgo's behalf that BHE's failure to reappoint her violated § 17.3 (Professional Evaluations) and § 25.6 (Job Security) of the agreement. Prior to Step II, PSC further alleged a violation of Article VII (discrimination).*** BHE's defense was that the decision not to reappoint was one of academic judgment and was, therefore, not subject to challenge.

* Record references are omitted for uncontroverted facts.

** PSC App. pp. 30-31.

*** PSC App. pp. 35, 36.

BHE prevailed at Step I and Step II. In accordance with the Nota Bene Clause of Article VI, the grievance procedure in Ms. Morpurgo's case, which involved a matter of academic judgment, would customarily have terminated at Step II. The Note Bene states:

Nota Bene:

Grievances relating to appointment or reappointment which are concerned with matters of academic judgment may not be processed by the Union beyond Step 2 of the grievance procedure. Grievances within the scope of these areas in which there is an allegation of arbitrary or discriminatory use of procedure may be processed by the Union through Step 3 of the grievance procedure. In such case the power of the arbitrator shall be limited to remanding the matter for compliance with established procedures. It shall be the arbitrator's first responsibility to rule as to whether or not the grievance relates to procedure rather than academic judgment. In no event, however, shall the arbitrator substitute his judgment for the academic judgment. In the event that the grievant finally prevails, he shall be made whole.

Notwithstanding the Nota Bene, PSC processed Ms. Morpurgo's grievance to arbitration--Step III.

Following a full hearing at arbitration, Arbitrator Milton Rubin rendered an opinion and award*which denied the grievance and sustained BHE. In essence, the Arbitrator reasoned that decisions affecting appointment and reappointment are properly matters of academic judgment, that while Ms. Morpurgo could properly question BHE's procedural compliance with the collective bargaining agreement she could not question whether academic judgment was properly exercised and that, in any event, BHE had complied with the procedural requirements relating to professional

* PSC App. pp. 34-41.

evaluations as set forth in Article XVII of the collective bargaining agreement.

Shortly thereafter, having lost her arbitration, Ms. Morpurgo lodged a complaint against PSC with the New York State Public Employees Relations Board ('PERB')*. This complaint charged PSC with failing to properly represent Ms. Morpurgo in her dispute with BHE.

Ms. Morpurgo thereafter withdrew** her PERB charge against PSC by agreement dated February 5, 1974, in which PSC agreed to make its files available to her and to otherwise assist her in the complaint she had filed against various parties (but not the PSC) before the EEOC. (See PSC App. p. 53.)

Thus, prior to the institution of this action against PSC, Ms. Morpurgo had raised the discrimination issue at Step II of the grievance procedure and PSC's improper representation of her before PERB. It was only after PSC had opened its files to her following her withdrawal of her PERB charges against PSC, that she instituted this action in the District Court.

B. Pleadings and Proof*** as against PSC

1. Conspiracy Counts

* PERB and its powers are defined in McKinney's Consol. Laws of N.Y. § 205 (Article XIV of the New York Civil Service Law).

** The complaint is mentioned in, but is not part of the record, because the issue, and the facts upon which such issue is based, were not fully argued below. PSC reserves the right to urge the PERB proceeding as a bar to this action, but does not urge this position on this appeal.

***The documents relevant to Mrs. Morpurgo's allegations against PSC are her amended verified complaint and her deposition (a written narrative statement). Ms. Morpurgo's in camera statement does not pertain to PSC; Ms. Morpurgo's one page affidavit opposing PSC's motion inter alia, to dismiss is marginally relevant.

Assuming the truth of her allegations for purposes of this appeal, Ms. Morpurgo's amended verified complaint*states that she is "of ambiguous race, religion, ethnic origin, and sex, through self-proclamation as integrated, free thinker, nonethnic, and unisex (¶8); that she has been "persecuted as 'black', 'gay', 'aetheist', 'pacifist', 'communist', 'radical', by "extremist organizations known as the Klu Klux Klan, violent Black, Gay, Catholic, Jewish, Italian, Nazi, Communist militants..." (¶9).

She then alleges that, based upon "the public press", persons of her class "have recently follow prey to the unlawful misuse of our national and international security system" (¶10); that she has "suffered repeated intrusions of privacy due to improper counterintelligence actions and files"initiated by "the FBI and "coordinated" by the CIA (¶11); that, among others, PSC "covered up" such invasions of privacy (¶12); that she was not rehired by BHE because of "discrimination and cover up" (¶15); that PSC participated in covering up her "union grievances" (¶23); and that PSC, among others, engaged in a conspiracy against Ms. Morpurgo and exchanged confidential information regarding her without her knowledge or consent (¶31).

These allegations fairly represent Ms. Morpurgo's conspiracy claims; her proof is non-existent. PSC denied the allegations; since no proof was adduced in support of the claim there was nothing for PSC to refute or affirmatively prove. Judge Weinfeld

* PSC App. pp. 3-8.

characterized Ms. Morpurgo's pleadings and proof thus (423 F. Supp. at 716):

"Plaintiff alleges that individuals employed by the PSC acted unlawfully to cover up evidence of counterintelligence actions taken against her, withheld evidence of other unspecified invasions of her privacy and engaged in a conspiracy to cover up her union grievances. The PSC grievance counselor who represented plaintiff when her complaints against CUNY were submitted to arbitration is alleged to have presented her case inadequately and to have wrongfully failed to press plaintiff's claim of discrimination in the arbitration proceedings. The PSC is also alleged to have exchanged confidential information concerning plaintiff with other defendants without obtaining her consent and thus to have impeded her litigation efforts. Finally, the PSC is alleged to have participated in the conspiracy to interfere with plaintiff's civil rights.

At the outset, it is once again clear that plaintiff has not tendered factual allegations tending to show that the PSC participated in a conspiracy to deprive her of her civil rights. Indeed, the allegations against the PSC relating to its alleged participation in a conspiracy are so vague and conclusory that they fail to establish a cause of action under section 1985.

Ms. Morpurgo's conspiracy claims against PSC were rightfully dismissed; she offers neither credible evidence nor realistic claims from which this Court might reasonably infer a colorable claim, however imperfectly pleaded. The claims are illusory and are unsubstantiated, nor can they be. The amended verified complaint, therefore, is fatally defective.

2. Breach of duty of fair representation

Ms. Morpurgo's complaint alleges that her representation by PSC "at Arbitration...was knowingly and willfully inadequate, in presentation of evidence, witnesses, presence of Plaintiff at all

proceedings which was denied her, and in the bringing of sufficient charges against BHE; the issue of discrimination or of academic freedom was not brought before the Arbitrator, and this is a violation of Title VII and Union contract" (§16,26).

Ms. Morpurgo's deposition*elaborates on this charge. PSC did not submit all materials Ms. Morpurgo gave the grievance counselor at Step I of the grievance procedure, although Ms. Morpurgo did allude to them at the Step I hearing (§10f). No claim is made that such material (which is neither described nor identified) was not used on her behalf at Step II or Step III of the grievance process.

Leaving this unidentified material to one side, the core of her claim is the alleged failure of PSC to raise and press the discrimination issue in processing her grievance. (§17-19). In fact, however, discrimination, to the extent that it could be litigated during the grievance procedure, was raised at Step II.

Discrimination was not raised before the Arbitrator because to do so would have been futile. It is BHE policy, as set forth in the Max-Kahn memorandum,**to preserve confidentiality in the reappointment process. Paragraph 3 of this memorandum states:

"Confidentiality. The confidentiality of reports, including evaluation reports, on the qualifications of candidates appointments, reappointments, and promotions should be preserved, and to that end those reports should be kept in a confidential file and should not be part of the candidates personnel folder."

* PSC App. pp. 13-17.

** PSC App. pp. 42-46, particularly p. 44.

Thus, had Ms. Morpurgo been denied reappointment because of sex or other discrimination, evidence of such discrimination if sealed in her confidential file, could not be used on her behalf by PSC. Again, Ms. Morpurgo does not allege what information or facts PSC had available to it to carry the charge.*

As recently as 1976 PSC tested the confidentiality provision of the Max-Kahn memorandum in the state courts. The New York Court of Appeals sustained an arbitration award which rejected a grievance of a college teacher who allegedly had been denied tenure because of sex discrimination. The award had been attacked because the arbitrator refused to direct a faculty member to reveal confidential information affecting the tenure decision. Professional Staff Congress v Board of Higher Education, 39 N.Y. 2d 319 (1976).** This decision confirmed the sanctity of the academic decision making process, a process which had invariably been upheld by Arbitrators in past proceedings over the years.

In this context, Ms. Morpurgo's claim that PSC breached its statutory duty by not raising the discrimination issue is totally without foundation. There is not one scintilla of evidence to support such a claim or, indeed, to circumvent the Max-Kahn memorandum, the existence and force of which affirmatively demonstrates that PSC acted responsibly in the processing of Ms. Morpurgo's grievance.

* The discrimination action (complaint ¶ 11) of which Ms. Morpurgo is a participant, and not grievance procedures, is the forum to litigate a pattern of discrimination. (See PSC App. p. 5.)

** PSC App. pp. 47-52.

This conclusion is underscored by Ms. Morpurgo's settlement of the complaint which she lodged against PSC before PERB. In withdrawing these charges Ms. Morpurgo acknowledged that PSC's decision not to pursue the discrimination claim against BHE "constitutes a recognition of limitations imposed by our contract..." Thus, Ms. Morpurgo explicitly acknowledged the limits which the contract imposed upon PSC. Having once made claim against PSC for improper representation, and having thereafter acknowledged the limitations of the union contract by abandoning her administrative remedy, it is vexatious of Ms. Morpurgo to institute this action. This claim was properly dismissed and in the alternative, partial summary judgment was properly granted.

The judgment of Judge Weinfeld, as it relates to PSC, should be affirmed in all respects.

ARGUMENT

POINT I

THE AMENDED VERIFIED COMPLAINT WAS PROPERLY DISMISSED SINCE APPELLANT DENIES THAT SHE WAS THE VICTIM OF INVIDIOUS DISCRIMINATION PREDICATED UPON IMPERMISSABLE CONSIDERATIONS OF SEX, RACE OR OTHER PROTECTED CLASS.

Appellant asserts that she is "of ambiguous, race, religion, ethnic origin, and sex." A fair reading of her complaint even after repleading, reflects her position that the decision of BHE not to reappoint her was clearly not predicated upon impermissible considerations of race or sex. Consequently, her § 1985 (3) and Title VII claims must fall as no invidious discrimination is alleged. Griffin v Breckenridge, 403 U.S. 88, 102 (1971); Kletschka v Driver, 411 F. 2d 436, 447 (2d Cir. 1969); Bergman v Stein, 404 F. Supp. 287, 294 (S.D. N.Y. 1975).

In Kletschka, this court stated (at 447) that:

" Plaintiff does rely on his claim under § 1985 (3), which reaches conspiracies under color of State law to deprive a person of "the equal protection of the laws." But whatever other rights plaintiff may have been deprived of equal protection is not one of them. The actions taken by defendants were directed only against plaintiff as an individual and not because he was a veteran, or a member of some class or race. A violation of equal protection would be shown if the actions against plaintiff were part of a general pattern of discrimination, or were based on impermissible considerations of race or class, but plaintiff has not raised a genuine issue of fact concerning such discrimination. See Birnbaum v. Trussell, 371 F. 2d 672, 676 (2d Cir. 1966); Birnbaum v. Trussell, 347 F2d 86, 90 (2d Cir. 1965).

Similarly, in Bergman, the Court stated (at 294):

" We turn now to defendants' claim that plaintiff has not stated a cause of action under 42 U.S.C. § 1985 (3). Plaintiff relies upon both § 1985 (2) and § 1985 (3). In Griffin v. Breckenridge, 403 U.S. 88, 91 S.Ct. 1790, 29 L.Ed. 2d 338 (1971), the Supreme Court held that § 1985 (3) did not apply to all tortious activity but only to conspiracies which deprived persons of equal protection of the laws. To state a claim under § 1985 (3), Griffin v. Breckenridge requires that the complaint allege class-based or racially discriminatory "animus behind the conspirators' action." 403 U.S. at 102, 91 S.Ct. 1790. As plaintiff's claim here rests on the allegation that defendants singled him out as the object of their conspiracy but does not suggest defendants were motivated to act because of class-based or racial discrimination, plaintiff's claim under § 1985 (3) must fail. See also Raitport v. Chase Manhattan Capital Corp. 388 F. Supp. 1095 (S.D.N.Y. 1975); Barrett v. United Hospital, 376 F. Supp. 791 (S.D. N.Y. 1974), aff'd without opinion 506 F.2d 1395 (2d Cir. 1974), and Lopes v. Arrowhead Ranchers, 523 F.2d 924 (9th Cir., 1975).

Title VII, as well as § 1985 (3) explicitly predicates an action thereunder upon invidious discrimination 42 U.S.C. § 2000e-2(a) and (c). Assuming arguendo that appellant was the subject of discrimination, it is clearly her position that such discrimination was directed against her as an individual and not as a member of a constitutionally protected class. She fails, therefore, to state claims upon which relief may be granted under 42 U.S.C. § 1985 (3) or under Title VII.

POINT II

THE AMENDED VERIFIED COMPLAINT ALLEGES VAGUE AND CONCLUSORY CLAIMS UNSUPPORTED BY CREDIBLE EVIDENCE; THE COMPLAINT WAS, THEREFORE, PROPERLY DISMISSED BY THE COURT BELOW.

It is well nigh impossible for PSC to respond to the non-factual conclusory allegations in the amended verified complaint regarding its alleged conspiracy against appellant. As this Court stated in Powell v. Workmen's Compensation Board, 327 F. 2d 131, 137 (2d Cir. 1964):

"It was incumbent upon him to allege with at least some degree of particularity overt acts which defendants engaged in which were reasonably related to the promotion of the claimed conspiracy."

See: Jacobson v. Organized Crime & Racketeering Section, 544 F. 2d 637 (2d Cir. 1976); Koch v. Yunich, 533 F. 2d 80, 85 (2d Cir. 1976); Fine v. City of New York, 529 F. 2d 70, 74 (2d Cir. 1975); Powell v. Jarvis, 460 F. 2d 551, 553 (2d Cir. 1972); Scott v. University of Delaware, 385 F. Supp. 937, 944-45 (D. Del. 1974).

The same rule obtains in cases involving claims of alleged violation of the duty of fair representation to a union member.

Thus, in Lusk v. Eastern Products Corp., 427 F. 2d 705, 708 (4th Cir. 1970), the Court stated:

"However, the allegations of a complaint alleging a breach of a union's duty of fair representation must contain more than conclusory statements alleging improper representation; conclusory allegations without specifying supporting facts to show the union's lack of good faith fail to state a valid claim."

See Slagley v. Illinois Central R. R., 397 F. 2d 546, 552 (7th Cir. 1968).

The sole allegation made by appellant. (in support of her myriad claims against ISC) that is capable of being factually answered and refuted is her claim that PSC failed to charge BHE with discrimination. Appellant's failure to buttress this allegation with facts sufficient to establish a colorable claim renders the complaint fatally defective under Lusk and Slagley. The District Court correctly dismissed the amended verified complaint.

POINT II

THE DISTRICT COURT CORRECTLY GRANTED PSC'S MOTION FOR PARTIAL SUMMARY JUDGMENT DISMISSING APPELLANT'S CLAIM THAT PSC BREACHED ITS STATUTORY DUTY OR FAIR REPRESENTATION TO APPELLANT.

Pleading deficiencies aside, PSC's derelictions, if accepted as true, do not constitute a breach of PSC's statutory duty of fair representation as a matter of law.

As Vaca v. Sipes, 386 U.S. 171, 190 (1967) holds:

"A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory or in bad faith."

Vaca also holds that a member has no absolute right to arbitration of his grievance (386 U.S. at 191), even when the underlying claim is meritorious (386 U.S. at 194-5). In short, PSC would have breached its duty only if it had ignored the grievance entirely or had handled it in a perfunctory manner. Simberlund v. Long Island R.R., 421 F. 2d 1219, 1226 (2d Cir. 1970).

The facts demonstrate, however, that PSC did not ignore appellant's grievance or handle it in a perfunctory manner. PSC took the case to arbitration despite the Nota Bene clause of Article VI of the collective bargaining agreement which, in practice, prohibits arbitration in cases challenging the exercise of academic judgment.

Moreover, PSC did raise the discrimination issue at Step II despite the limitations imposed upon the grievant by BHE's policy

of confidentiality, a policy which is part of the collective bargaining agreement and which was sustained by the New York Court of Appeals in Professional Staff Congress v. Board of Higher Education, 39 N.Y. 2d 319, 383 N.Y.S. 2d 592 (1976). PSC would have been fully justified under Vaca had it chosen not to raise the discrimination claim in Step II on grounds of futility. United Rubber, etc. Workers v NLRB, 368 F. 2d 12, 17 (5th Cir. 1966), cert. denied, 389 U.S. 837 (1967).

Appellant's further claim that PSC failed, during Step I only, to introduce certain unspecified documents into evidence is not of sufficient magnitude on this record to constitute representation "arbitrary, discriminatory, or bad faith" under Vaca. Appellant has failed to meet her burden on this charge. The District Court properly granted partial summary judgment to PSC dismissing this portion of appellant's claim.

POINT IV

APPELLANT'S FAILURE TO NAME PSC AS A RESPONDENT BEFORE
THE EEOC MANDATES DISMISSAL OF APPELLANT'S TITLE VII CLAIM
AGAINST PSC.

It appears from the record, although not argued below, that PSC was not a respondent in the claim appellant filed with the EEOC. The failure to name a party in an EEOC proceeding is a jurisdictional defect requiring dismissal of a Title VII action against such party. Le Beau v. Libby-Owens-Ford Company, 484 F. 2d 798 (7th Cir. 1973). Scott v. University of Delaware, 385 F. Supp. 937 (D.Del. 1974).

CONCLUSION

THE DISTRICT COURT CORRECTLY DISMISSED THE AMENDED VERIFIED COMPLAINT FOR VAGUENESS AND TOTAL LACK OF SPECIFICITY. IN ADDITION, PSC'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON APPELLANT'S FAIR REPRESENTATION CLAIM WAS PROPERLY GRANTED. THE JUDGMENT OF THE DISTRICT COURT, WITH RESPECT TO PSC, SHOULD BE AFFIRMED IN ALL RESPECTS.

Respectfully submitted,

STURM AND PERL

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Robert Kruger
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Roger H. Madon
D. Nicholas Russo

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss .

RICHARD WITHERS being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 660 UNION AVE
BROOKLYN, N.Y.

That on the 16 day of DECEMBER, 19 77,
deponent personally served the within BRIEF OF DEFENDANT -
APPELLEE PROFESSIONAL STAFF CONGRESS C.N.Y. (PSC)
upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose

~~By leaving true copies of same with a duly
authorized person at their designated office.~~

By depositing 2 true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.

Names of attorneys served, together with the names
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Sworn to before me this

16 day of December, 19 77

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Notary Public, State of New York
No. 03-0930908
Qualified in Queens County
Commission Expires March 30, 1979